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Subject
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Office Memorandum • UNITED STATES GOVERNMENT

TO : L. R. Houston

DATE: 22 October 1952

FROM : SUBJECT: Item for the Daily Log - *22 October (Wednesday)*CONTRACTS

1. The incident establishes the fact that some undertakings are so hazardous that insurance is not available in any amount. With respect to these non-insurable areas, contractors are unwilling to negotiate or proceed with the work unless the Government agrees to indemnify against liability. Pursuant to our conversation, I discussed this matter with representatives of the General Accounting Office and was advised that there are no regulations or decisions which would preclude the Government from entering into contracts indemnifying contractors against liability concerned. Mr. Friend, GAO, noted that P. L. 557, which authorizes the Departments of the Army, Navy and the Air Force to indemnify contractors against the liabilities involved, was the result of a split opinion with respect to authority. One school of thought held to the principle that the Government had the inherent power to contract with indemnification provisions. The other school of thought held that it was improper in the absence of statutory authority. Hence, P. L. 557 purports to be a resolution of this problem.

2. Mr. Friend indicated that it was his opinion that our permanent legislation coupled with a clear demonstration that such provisions were necessary in order to accomplish our objectives would afford a proper basis for such indemnification arrangements.

3. The matter of budgeting for unforeseen hazards was discussed. The contingency of such occurrences and the impossibility to see fully the extent of such claims suggested that no attempt be made to budget and that such costs be charged out of funds generally available for the contract or for research and development.

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